

DEPARTMENT OF STATE

THE LEGAL ADVISER

June 26, 1956

MEMORANDUM

To: EUR/WE - Mr. Jones

From: L/EUR - Mr. Yingling

Subject: Possibility of American Citizens Accepting Posts with Algerian Army of National Liberation

You state that the Department has received inquiries from Americans attracted by advertisements appearing in American newspapers offering jobs to United States meteorologists, control tower operators and mechanics in connection with aircraft to be used in so-called "mercy missions" by the Algerian National Army fighting the French in Algeria. You request our views of the legal issues which would be involved in such participation by American citizens, particularly with regard to questions of citizenship and the issuance of passports.

? It appears from the text of the advertisements accompanying your memorandum that this is not military service and that Americans accepting the offers would not be called upon to bear arms, wear a uniform or insignia, or to bind themselves by any oath, although they might be subject to occasional combat conditions. If this is the case, Americans engaging in this activity would not lose their American citizenship under section 349(a)3 of the Immigration and Nationality Act by "entering, or serving in, the armed forces of a foreign state". None of the other expatriation provisions of the Act would seem to have any applicability.

Whether the Secretary of State in the exercise of his discretion should refuse passports to Americans desiring to accept these positions is a question of policy. It is difficult to predict at this time whether such refusals would be sustained if challenged in the Courts, in view of the status of pending court cases involving passports. However, it is probable that refusals of passports to such people could be more easily justified as coming within the normal conduct of foreign relations than most of the other refusals which have been challenged thus far. The only specific regulation which would appear to authorize such refusal is the recently promulgated one contained in 22 C.F.R. 51.136 which provides as follows:

"In order to promote and safeguard the interests of the United States, passport facilities, except for direct and immediate return to the United States, will be refused

when

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when it appears to the satisfaction of the Secretary of State that the person's activities abroad would: . . . (b) be prejudicial to the orderly conduct of foreign relations; . . ."

It does not appear from the information available that Americans accepting these offers of employment would be violating any of the criminal laws of the United States. The only ones that could have any bearing are sections 959(a) and 960 of Title 18 of the United States Code providing as follows:

"959. Enlistment in foreign service

(a) Whoever, within the United States, enlists or enters himself, or hires or retains another to enlist or enter himself, or to go beyond the jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people as a soldier or as a marine or seaman on board any vessel of war, letter of marque, or privateer, shall be fined not more than \$1,000 or imprisoned not more than three years, or both."

"960. Expedition against friendly nation

Whoever, within the United States, knowingly begins or sets on foot or provides or prepares a means for or furnishes the money for, or takes part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace, shall be fined not more than \$3,000 or imprisoned not more than three years, or both. June 25, 1948, c. 645, 62 Stat. 745."

Neither of these sections would be applicable as it does not appear that these people are to enlist in the United States or that they are to serve as soldiers, marines or seaman on "board any vessel of war, letter of marque, or privateer" or that any military or naval expedition or enterprise is to be carried on against French territory from the United States.

L/EUR:JMK:es